Part 65—Certification: Airmen Other Than Flight Crewmembers

This change incorporates Amendment 65–37, Alcohol Misuse Prevention Program for Personnel Engaged in Specified Aviation Activities, adopted January 25, 1994. The final rule revises §§ 65.23 and 65.46. The preamble to this amendment starts on page P–145.

Page Control Chart

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Suggest filing this transmittal at the beginning of the FAR. It will provide a method for determining that all changes have been received as listed in the current edition of AC 00–44, Status of Federal Aviation Regulations, and a check for determining if the FAR contains the proper pages.

Subpart C	71.501
Subpart D or Subpart E	71.171
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The Rule

In consideration of the foregoing, the Federal Aviation Administration amends SFAR 51–1, SFAR 60, SFAR 62, parts 1, 11, 45, 61, 65, 71, 75, 91, 93, 101, 103, 105, 121, 127, 135, 137, 139, and 171 of Federal Aviation Regulations (14 CFR parts 1, 11, 45, 61, 65, 71, 75, 91, 93, 101, 103, 105, 121, 127, 135, 137, 139, and 171).

The authority for part 65 is amended by revising it to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g).

Amendment 65–37

Alcohol Misuse Prevention Program for Personnel Engaged in Specified Aviation Activities

Adopted: January 25, 1994 **Effective: March 17, 1994**

(Published in 59 FR 7380, February 15, 1994)

SUMMARY: This final rule prescribes regulations establishing the aviation industry alcohol misuse prevention program. It includes requirements for an alcohol testing program for air carrier employees who perform safety-sensitive duties, in implementation of the FAA-related provisions of the Omnibus Transportation Employee Testing Act of 1991, which was enacted on October 28, 1991. Employees who perform safety-sensitive duties directly or by contract for aviation employers that hold a certificate issued under certain FAA regulations, operators as defined in the regulations, or air traffic control facilities not operated by the FAA or the U.S. military must be subject to an FAA-mandated alcohol misuse prevention program (AMPP). This final rule requires alcohol testing of these employees, proscribes certain alcohol-related conduct, and establishes specified consequences for engaging in alcohol misuse. Employers must provide written materials to covered employees explaining the program and educating employees about the dangers of alcohol misuse. Employers must also submit reports to the FAA on the results of the program. This rule is intended to ensure that public safety is maintained by preventing alcohol misuse by safety-sensitive aviation employees.

SW., Washington, DC 20591, or by calling (202) 267–3484. Requests must include the notice number of this final rule.

Persons interested in being placed on a mailing list for future rulemaking actions should request a copy of Advisory Circular 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

On December 15, 1992, the FAA published a notice of proposed rulemaking (NPRM) in which it proposed to require air carriers to institute alcohol misuse prevention programs similar to the antidrug programs already in place (57 FR 59458). The NPRM was published as part of a coordinated effort by the Office of the Secretary of Transportation (OST) and four other DOT agencies to address the issue of alcohol misuse in the transportation industries. With the exception of the NPRM published by the Research and Special Programs Administration, the rulemakings were initiated under the provisions of the Omnibus Transportation Employee Testing Act of 1991 (P.L. 102–143, Title V).

In conjunction with OST and the other DOT agencies, the FAA held a series of public hearings on the regulations proposed in the NPRM. The FAA-specific sections of each of these hearings were recorded by a court reporter and the transcripts of the hearings with copies of any material submitted to the hearing panel have been placed in the docket. The testimony and written materials were considered in development of this final rule.

Current Laws and Regulations

A variety of laws and regulations currently restrict the consumption of alcohol by some aviation employees. Federal criminal law prohibits any person from operating or directing the operation of a common carrier while under the influence of alcohol. 18 U.S.C. 342. A blood alcohol level of .10 percent is considered presumptive evidence that the person is under the influence. 18 U.S.C. 343(1).

The FAA's regulations concerning alcohol misuse are supplemented but not changed by this rule. Currently, under the FAA's rules, no person may act or attempt to act as a crewmember of a civil aircraft within 8 hours after consuming any alcoholic beverage, while under the influence of alcohol, or while having 0.04 percent by weight or more of alcohol in the blood. (14 CFR 91.17(a).) In limited circumstances, the FAA's regulations require crewmembers to submit to alcohol tests requested by State or local law enforcement officers and, upon request, to furnish the results of such tests to the Administrator. (14 CFR 91.17(c).) Refusal to take a properly authorized law enforcement alcohol test or to furnish the results can result in the denial, revocation, or suspension of an airman certificate issued under part 61 or 63. (14 CFR 61.16 and 63.12a.)

Holders of or applicants for medical certificates issued under 14 CFR part 67 are subject to additional regulations regarding alcohol use. First, a diagnosis of alcoholism is a disqualifying factor for a medical certificate. A diagnosed alcoholic must be evaluated by the Federal Air Surgeon and meet certain recovery criteria prior to receiving a medical certificate. However, to facilitate recovery and to prevent the unnecessary loss of skilled employees, a program established by the FAA, the airline industry, and the pilots' unions has enabled hundreds of alcoholic pilots to safely return to duty. The program combines confrontation, therapy, and stringently monitored aftercare.

Part 67 also provides that any individual who applies for a medical certificate must permit access by the Administrator to information in the National Driver Register concerning drug- and alcohol-related driving offenses. (14 CFR 67.3.) If an individual has had two or more such offenses within 3 years after the effective date of the rule, the FAA may suspend or revoke a part 61 airman certificate held by the individual or deny the individual's application for such certificate. (14 CFR 61.15.)

DOT agency dockets that raise multimodal aspects of the final rules of the Act. This common preamble is incorporated into this final rule by reference. Because the majority of the issues raised in comments were addressed in the common preamble, the FAA views comments addressed to other DOT agencies as part of its docket, even though copies of those comments are not physically stored with the other comments. Interested persons can request access to those comments through the FAA docket. Any aspects of the final rule that are not discussed below are addressed in the common preamble.

Alcohol Misuse Prevention Program (AMPP)

The essential provisions of the AMPP proposed by the FAA in the NPRM have remained largely unchanged in this final rule. The rule uses three primary tools for reducing the threat of alcohol misuse in aviation. First, by amending parts 65, 121, and 135, the rule prohibits certain alcohol-related conduct by employees performing safety-sensitive duties. Second, under the provisions of new appendix J to part 121, such employees must be subject to pre-employment, random, post-accident, reasonable suspicion, return to duty, and follow-up alcohol testing. This testing is federally-mandated but will be administered by the affected employers. Third, in accordance with requirements in appendix J, employees subject to the rule must be provided with materials designed to educate them about the provisions of the rule and the consequences of engaging in alcohol misuse.

Other Requirements Imposed by Employers; Requirement for Notice

Only a few commenters addressed the issue of possible conflicts or confusion regarding company-required programs and FAA-mandated programs. These commenters (representing both labor and management) focused on the issue of alcohol test results of 0.02 to 0.039. The commenters noted that although the FAA's NPRM proposed specific actions for test results falling within this range, an employer is not precluded from taking severe employment action based on these results should the employer so choose. A number of labor organizations wanted the FAA to preclude such action in its final rule.

The FAA has not adopted these comments. The choice of whether to continue to employ an individual should properly remain within the discretion of the employer. We also note that employment or other consequences outside those required by the rule may be subject to both State law and labor-management negotiation.

With respect to the establishment of a separate company policy, a number of commenters noted that companies already had alcohol testing or prevention programs in place. These commenters stated that established programs should suffice for compliance with the FAA's rule, or that the FAA's rule would unnecessarily duplicate these programs.

The FAA recognizes that, as was the case when the antidrug rule was first implemented, some employers might have programs that encompass some or all of this rule's requirements. To ensure complete and uniform compliance with a single regulatory standard, however, we are not permitting company programs to substitute for programs required by this rule. Should an aviation employer determine that, as a matter of company policy, a different program should be implemented or continued, the program must be clearly separate from the program required under this rule, with appropriate notice given prior to tests under this rule. The FAA will not permit commingling of employer-directed and FAA-mandated programs.

Employers Required to Establish Programs

The NPRM reflected the FAA's best assessment, based on the developments in the FAA's industry antidrug program, of the categories of employers that should be subject to the alcohol misuse rule. Like the antidrug rule, the FAA determined that the minimal benefit to public safety that might accrue from inclusion of operators that did not hold part 121 or part 135 certificates did not warrant the cost and intrusiveness of alcohol testing. A few commenters addressed this issue and requested additional relief for the small aviation employers we did propose to cover. The FAA has assessed its requirements

that all covered employees who perform services for them are subject to an FAA-mandated program.

Employees Subject to the Rule

The NPRM proposed to retain essentially the same coverage as the antidrug rule. The covered categories included persons performing any of the following duties: flight crewmember, flight attendant, flight instruction, aircraft dispatch, aircraft maintenance, ground security coordinator, aviation screening, and air traffic control. The category of flight test personnel was not included because it was redundant. The category of ground security coordinator duties was specified separately to reflect the coverage intended by the term ''aviation security'' in the antidrug rule.

In order to determine if any changes should be made in the categories of covered employees, the FAA asked a number of questions in the NPRM. The questions were intended to solicit comment on whether the increased benefit to safety that could accrue by including other functions would warrant the imposition of an alcohol testing requirement on individuals performing those functions or if, consistent with safety, categories of employees could be eliminated from the rule.

The comments on this issue ranged from those stating that since the rule was unnecessary it should provide only the minimum coverage required by the Act to a few comments stating that every aviation employee who could even possibly affect safety should be subject to alcohol testing. Most labor organizations favored the former approach. A number of commenters supporting limited application of the rule recommended that only maintenance personnel who actually return aircraft to service should be covered by the rule. A few commenters supported adding to the coverage proposed in the NPRM. These commenters primarily identified refuelers and deicers as categories of employees that should be subject to alcohol testing.

The FAA has chosen to retain the categories of covered employees proposed in the NPRM. Although a system of checks and inspections does exist to ensure that maintenance activities are properly performed, the FAA has determined that it is essential that the individuals who perform aircraft maintenance activities be subject to this rule. (The term preventive maintenance has been added to maintenance not because the FAA intends to increase the reach of the rule, but rather to ensure that, as was intended in the NPRM, the rule clearly parallels the coverage of the antidrug rule.)

The FAA carefully reviewed the comments supporting the inclusion of additional categories of covered employees. For a number of reasons, the FAA has elected not to adopt these recommendations. First, the FAA is aware that the costs associated with this rule will be significant. Each additional requirement that was considered was therefore scrutinized with respect to the cumulative burden that would accrue. Based on that consideration, the FAA has determined that the possible marginal benefit that might be achieved by adding categories of covered employees is outweighed by the burden associated with such a change.

Prohibited Alcohol-Related Conduct

This rule will prohibit specific alcohol-related conduct by covered employees and will also prohibit an employer from using a covered employee if the employer has actual knowledge that the employee has engaged in such conduct. Each of the prohibitions has been carefully tailored to minimize the restriction on the otherwise lawful use of alcohol by covered employees. With the exception of use of alcohol after an accident, each prohibition is limited to prohibiting alcohol use that may affect the performance of covered functions. Some commenters requested that the FAA list the specific actions within a safety-sensitive function that trigger coverage under this rule. Given the variety of tasks encompassed within each category and the differences in the conduct of aviation operations by different employers, however, a comprehensive regulatory listing of such activities is not possible. Therefore, as was proposed in the NPRM, coverage under the rule will be determined by the employer based on the requirements of the FAA's regulations and the employer's experience and knowledge of the employees' duties.

0.04% or greater.

Performance of covered functions while under the influence of alcohol: As noted above, the FAA's current regulations prohibit any person from acting or attempting to act as a crewmember while under the influence of alcohol. While the FAA's experience in enforcing this provision indicates that it is a useful tool in preventing alcohol misuse, it has been determined that such a prohibition in the context of an employer-based program, with no intervention by a Federal agency or right to review, could lead to unacceptable treatment of employees. This provision has therefore been removed as a violation of the rule.

The concept of "under the influence" remains present in this final rule, however, as part of the reasonable suspicion testing requirement. Under the final rule, if an employer were to determine that sufficient evidence existed to believe that a covered employee was under the influence of alcohol, the employer would be required to administer a reasonable suspicion test. If no test could be performed, safety would still be protected because the employee must be removed from performing safety sensitive duties temporarily.

This rule does not limit the employer's authority to remove the employee from the performance of safety-sensitive duties if the employer believed, notwithstanding an alcohol test result of less than 0.04 or no test at all, that the employee was impaired. As noted previously, the employer must remove the employee, at least temporarily, if the employee's alcohol concentration was 0.02 or greater but less than 0.04 or if no test could be performed. However, any action other than a temporary removal in either the absence of a test result or with a test result under 0.04 would have to be under the employer's independent authority.

On-duty use: A number of commenters expressed concern that the FAA's proposed definition of "performing safety-sensitive functions" could result in the application of the on-duty use prohibition to employees who might be at home on reserve status for days at a time. Given the dramatic effect of a violation of this provision (*i.e.*, it invokes the permanent bar addressed below), these commenters requested clarification of this provision.

This provision applies to any covered employee who, while not actually performing a safety-sensitive function, could be called at any time to perform. The FAA intends the provision to reach only employees who are at work. Affected employees include, for example, a maintenance supervisor who is in her office who could be called at any time to take over on a maintenance task. Such employees would have to refrain from using alcohol or would be in violation of the on-duty use provision. On-call or reserve employees who are not at work, such as those mentioned above, will, however, be subject to the prohibitions on pre-duty use of alcohol.

Additionally, the rule should not be read as permitting on duty use to be presumed from an alcohol concentration above the prohibited levels. This would of necessity require the application of back extrapolation to the results, which, as analyzed in detail in the common preamble, is not permitted. To assert a violation of this provision, the employer would have to have clear evidence of consumption of alcohol by a safety sensitive employee (*e.g.*, an admission, credible witnesses). One important aspect of the prohibition is that it is triggered by the consumption of items other than alcoholic beverages. **Use of a medication containing alcohol while on duty will violate this rule and will trigger the permanent bar provisions discussed below.** The FAA encourages employers and labor organizations to take appropriate steps to warn affected employees of this prohibition.

Pre-duty use: As was proposed in the NPRM, this rule provides a two-tiered prohibition with respect to pre-duty use of alcohol. No commenter opposed prohibiting alcohol use by a crewmember prior to duty, and many commenters wanted the prohibition extended to up to 24 hours before a flight. As noted above, the FAA already prohibits any person from acting or attempting to act as a crewmember within 8 hours after the consumption of any alcoholic beverage. This prohibition was based on a determination by the FAA that a specified period of abstinence would decrease the likelihood that an individual would be impaired by alcohol while acting as a crewmember. The FAA is aware that individuals who

A number of commenters objected to the FAA proposal to add a 4-hour pre-duty use limitation for other classes of covered employees. Some commenters believed that imposition of a 4-hour rule on all covered employees would have little safety benefit while intruding significantly into the lives of employees. The FAA agrees that the nature of the safety-sensitive functions other than crewmember duties is sufficiently different that an 8-hour limitation on pre-duty use of alcohol for those classes could constitute an unwarranted intrusion by the Federal government into the off-duty lives of aviation industry employees. The FAA continues to believe, however, that the minimal disruption that might be caused by a 4-hour limitation is outweighed by the safety benefit that is achieved by moderating the use of alcohol by safety-sensitive employees before they perform their duties.

The FAA is also not adopting a suggestion made in the public hearings regarding other DOT agencies' rules under which employees subject to short notice calls to work would have to abstain from consuming alcohol for 4 hours prior to duty or after being called to duty, whichever is shortest. The FAA does not believe that in the context of the aviation industry there is any situation in which the need for the employee to perform safety-sensitive functions is so exigent that a 4- or 8-hour limitation should be waived.

Use following an accident: As proposed in the NPRM, a covered employee with actual knowledge of an accident involving an aircraft for which he or she performed a safety-sensitive function at or near the time of the accident would be required to refrain from using alcohol for 8 hours unless the employee had been given a post-accident test or the employer had determined that the employee's performance could not have contributed to the accident. The restriction on use, as proposed, would primarily affect those employees whose performance of duties just around the time of the accident may have contributed to the accident and whose consumption of alcohol prior to the time of the accident would be relevant information.

A number of commenters questioned the FAA's ability to enforce this provision and the employees' ability to comply. Some commenters stated that it was unfair of the FAA to consider denying individuals who had been traumatized by an accident the relief that a drink might provide. The FAA recognizes that the rule might be difficult to enforce, and we encourage employers to attempt to control the actions of the affected employees as circumstances permit. The final rule also includes, as in the NPRM, an actual notice requirement so that employees who are unaware of an accident or who do not realize that their performance of duties may be implicated are not held to have violated the rule if, unknowingly, they use alcohol during the post-accident period. The FAA notes that the prohibition only applies if an employee performed a safety-sensitive function on the aircraft involved in an accident *at or near the time of the accident*. The rule does not, for example, affect individuals who performed maintenance on the aircraft days or weeks prior to the accident.

Despite the potential difficulties associated with this provision, however, and the commonly accepted practice of using alcohol to handle stressful situations, the prohibition is necessary to ensure that use of alcohol before an accident is not masked by allegedly post-accident consumption of alcohol.

Refusal to Submit to a Required Alcohol Test

A number of commenters objected to the FAA's proposal to treat refusal to submit to random, post-accident, reasonable suspicion, or follow-up testing as a rule violation (as discussed in the common preamble), or as a potential basis for the denial, suspension, or revocation of a certificate issued under 14 CFR part 61, 63, or 65. A few of these commenters stated that because alcohol testing was unconstitutional there should be no sanction attached to refusing to be tested. The Constitutional aspects of this rule are addressed in the common preamble.

A number of labor groups expressed concern that employees who were subjected to harassing tests or who became aware that proper procedures were not being followed (*e.g.*., the breath alcohol technician (BAT) reuses a mouthpiece) would be placed in the position of having to submit to questionable tests or face possibly severe sanctions. As with any potentially problematic test, the employee will have to

or return to duty testing. These provisions are consistent with the FAA's choice in the antidrug rule not to base certificate action on refusals of pre-employment drug tests, and therefore, these provisions remain unchanged.

Required Alcohol Testing

The common preamble discusses in detail the types of alcohol tests that are required under this rule and those of the other DOT agencies. There are, however, certain aspects of alcohol testing raised by the commenters that are specific to the aviation industry. Those issues are addressed below.

Pre-employment testing: As discussed more fully in the common preamble, the nomenclature used to describe this type of test has been changed from "pre-employment/pre-duty," as used in the NPRM, to simply "pre-employment." It should be noted that this change is not intended to affect the substantive requirements for this type of testing, or to imply that the testing must occur prior to hiring an individual. As was proposed in the NPRM, under this final rule employers may conduct pre-employment testing at any time prior to the first time the individual is used to perform (*i.e.*, is "employed" in) a safety-sensitive function. An individual may be tested prior to completion of the hiring process; after he or she has been hired for a safety-sensitive position but before actual commencement of duties; or, in the case of a current employee, prior to transferring the employee from performing non-safety-sensitive duties to performing safety-sensitive duties.

In the NPRM, the FAA requested specific comment on whether the proposed procedure for using the results of prior pre-employment alcohol tests would be useful. The majority of commenters did not feel that the provision should be retained. Labor groups were concerned that the confidentiality of information regarding employees' past alcohol use would be breached by this provision. Many employers expressed concern about the possibility of liability if they released the results, even in response to a specific employee consent. One commenter recommended that the FAA develop a standard consent form to be used for release of alcohol misuse information from an employer to any third party. Finally, some commenters stated that even if the use of prior test results was authorized, they would not use the option. They saw little utility in the option or expressed reservations about relying on tests the quality of which the employer could not ensure.

Although the FAA recognizes that few employers may choose to use the option of relying on an applicant's prior test results, the FAA has elected to retain this option. The difficulties, if any, associated with choosing this option would be one accepted voluntarily by the employer who so chooses. Further, the FAA notes that even in the absence of such a provision, a prospective employer could still seek information regarding the past performance of an applicant. The FAA has not adopted the recommendation to prepare a standard consent form for use in this or any other disclosure situation. The rule does contain specific language regarding the content of the consent; the FAA expresses no preference as to the format of the document.

Finally, one commenter stated that the pre-employment testing provision did not meet the requirements of the Act because it does not require testing for use of alcohol in violation of law or Federal regulation. While a strict reading of the Act may indicate that this commenter is correct, upon review of the legislative history of the Act, the FAA believes that the pre-employment testing provision in this rule meets the intent of Congress.

Post-accident testing: The NPRM proposed that post-accident alcohol testing would be essentially the same as in the antidrug rule. The triggering event would be an aircraft accident (as specifically defined in the rule) and the employees subject to testing would be the same—covered employees whose performance of safety-sensitive functions either contributed to an accident or cannot be completely discounted as a contributing factor.

Although commenters generally supported the concept of post-accident testing, some were concerned about the practical difficulties associated with determining which employees to test and ensuring the

relevant to whether the individual possibly contributed to the accident as a result of impermissibly using alcohol.

A number of commenters also questioned the requirement that individuals who may be subject to post-accident testing must, with limited exceptions, remain at the scene of the accident. These commenters noted that an aircraft accident is always an extremely traumatic event for the crewmembers involved and it would be unduly harsh to prevent these crewmembers from leaving the immediate vicinity of the accident.

The FAA accepts these concerns and has amended the provision in the final rule to require the employee to remain readily available for testing. This could include going to a crew lounge or airline office; however, the employee would have to take appropriate steps to ensure that if the employer determined that the employee must undergo post-accident testing, the employer would be able to rapidly locate the employee and have him or her tested. It would not, for example, be acceptable for the employee to leave the scene of the accident at an airport without informing the employer or a designated point of contact of the employee's location—even if the employee remained at the airport and technically "available" for testing.

The issues associated with remote site testing and conduct of tests within the required timeframes are addressed in the common preamble. As mentioned in that document, the FAA is not adopting the recommendation that employers be allowed to substitute for FAA-mandated tests post-accident tests conducted by law enforcement officers (LEOs) for law enforcement purposes. The FAA already has in place a provision (14 CFR 91.17) under which crewmembers required to submit to alcohol tests by LEOs may be required to provide the results of such tests to the FAA. The possible conflicts between the employer's obligations and the intent of post-accident tests under this rule and those of LEOs outweigh any benefit that might be achieved from such a proposal. (As discussed in the preamble to 49 CFR part 40, however, a LEO could serve as an employer's BAT, but any tests would have to be conducted pursuant to this rule and 49 CFR part 40.)

Random testing: As required by the Act, the rule includes random alcohol testing for covered employees. The FAA has tailored the testing to ensure that testing reasonably serves the FAA's interest in aviation safety. Selection procedures like those in current FAA-approved antidrug plans must be used to ensure randomness of testing.

The majority of comments received on random testing (other than those asserting it was unconstitutional and/or unnecessary) cited the particular difficulties associated with testing of crewmembers at or near the time of the flight. These commenters noted that pre-flight time for crewmembers, especially pilots, is very tightly scheduled, with little built in flexibility. The commenters asserted that employers would be faced with two choices: either arrange for all crewmembers to report for duty early every day (because testing is supposed to be both unannounced and random) to ensure that the employees were available for testing if they were selected, or accept that a certain number of flights might be delayed to accommodate the additional time required to conduct testing. These commenters asked that the FAA revise its rule to eliminate random testing or to permit all random testing to occur after flights terminate.

While the FAA is extremely sensitive to the financial and operational implications of this rule, it cannot adopt the recommendation of these commenters. Random alcohol testing is required by the Act. An effective random testing program must be designed to detect and deter all of the prohibited conduct: preduty use of alcohol, on-duty use of alcohol, and reporting for duty or remaining on duty with an impermissible alcohol concentration. Because post-flight testing (especially on long flights) would realistically only address on-duty use of alcohol, it would not serve the overall purpose of random alcohol testing. Similarly, if all testing were performed before flights (as recommended by one commenter), the testing program would have no deterrent effect for on-duty use of alcohol. The FAA intends to work with the aviation industry to assist employers in implementing the most cost-effective random alcohol testing programs possible.

site without any delay or detour. The time between notification and testing should be the absolute minimum necessary. The FAA recognizes that in some situations employees will have to advise supervisors that the employees must report for testing. Employers should ensure that they have instituted procedures to accommodate this provision (for example, the employer could arrange for the BAT to coordinate with designated supervisors to approve the employees' departure to a testing site before notifying the selected employees). The FAA expects that, with limited exceptions, the time between notification and testing will be no more than the requisite travel time to the testing site. If notification and testing occur at an airport, this time should be a matter of minutes.

Reasonable suspicion testing: Most of the commenters to the NPRM supported the provision for reasonable suspicion alcohol testing, although some labor organizations asserted that two supervisors should be required. The FAA has not adopted this recommendation. The common preamble discusses in detail the substantive revisions to this provision.

Return to duty and follow-up testing: The specific requirements for these types of tests are discussed in the common preamble.

Retesting after result of 0.02 or greater but less than 0.04: In the NPRM, the FAA sought comment on whether the proposed ''retest or return'' procedure gives employers enough flexibility (or too much) in handling covered employees with low-level alcohol concentrations. Because most commenters supported a single cut-off level, very few addressed this provision. One commenter stated that if the bifurcated cut-off system was adopted, all employees testing between 0.02 and 0.039 should be subject to another test before returning to work; employers should not have the option of waiting until the next duty period in lieu of a test.

The FAA has not adopted this recommendation. The primary intent of this rule is to protect safety, and that goal is adequately accomplished whether an employee tests below 0.02 or is made to wait at least 8 hours before performing safety-sensitive functions. No additional benefit would be achieved by instituting a return-to-duty testing requirement for all employees who test in the 0.02 to 0.039 range. Further, the rule does not preclude, and would in fact require, the employer to conduct a reasonable suspicion test if, when the employee next reported for duty, the employee showed indicators of alcohol misuse.

Recordkeeping and reporting; confidentiality

The requirements of the final rule with respect to recordkeeping are largely unchanged from the NPRM. The records must be maintained in a secure location and are releasable only as required under the rule or with the express written consent of the employee. This rule requires the release of employees specific information to a subsequent employer or other identified individual if the original employer receives a written request from the employee. Contrary to the concerns expressed by some commenters, the FAA believes that providing a regulatory mandate for such release and removal of employer discretion will minimize possible liability.

The rule also provides express authority to the FAA to conduct on-site inspections of employer's alcohol programs, including the alcohol testing process. As stated in the preamble to the NPRM, the FAA's experience with compliance monitoring under the antidrug rule has indicated that the individuals managing employers' programs are often unaware of the FAA's authority to conduct such inspections. While the Administrator or his designee has such authority even absent a regulatory provision, the FAA determined that inclusion of such a provision in this rule is necessary to ensure industry awareness of the FAA's authority to monitor compliance.

Although the NPRM proposed reporting of statistical information by all employers and other aviation entities with separate AMPPs, this final rule has been revised to limit the number of entities required to submit reports. The FAA similarly amended its antidrug rule, primarily to relieve the burdens associated with these rules on small employers. The formats to be used for reporting the statistical information

in the amendments to the other DOT agencies' statutes.

The "Prohibition on Service" section is found at new FAAct section 614(b). Under subsection 614(b)(1), an individual may not remain on duty in a safety-sensitive function if he or she has violated the prohibitions on the use of alcohol. This legislative provision on continued duty is reflected in each of the subsections of the FAA's rule addressing prohibited conduct (see, *e.g.*, 14 CFR 65.46a). Each section states either directly or by implication that the employee may not report for duty or remain on duty requiring the performance of safety-sensitive functions while engaging in conduct prohibited by the rule. These sections further provide that no employer who has actual knowledge that an employee is in violation of the rule may permit the employee to perform or continue to perform safety-sensitive functions. Additionally, appendix J, section V, paragraph A expressly prohibits an employee who has engaged in conduct prohibited by the rule from performing safety-sensitive functions. This section, consistent with the rules of the other DOT agencies, also requires removal from duty for refusal to submit to a required alcohol test.

Section 614(b)(2) of the FAAct, "Effect of Rehabilitation," states that no covered employee may perform a safety-sensitive function after engaging in prohibited conduct unless he or she has completed a rehabilitation program under the provisions of section 614(c) of the FAAct. Section 614(c)(1) requires the Administrator to prescribe regulations that provide, at a minimum, for the identification of employees in need of assistance in resolving problems with misuse of alcohol. Further, the section gives the Administrator the authority to determine the circumstances under which such employees would be required to participate in any required rehabilitation. The provisions recognize that rehabilitation may not be appropriate or warranted in all cases of prohibited conduct.

The legislative requirement of section 614(b)(2) is implemented in appendix J, section V, paragraph E, "Required evaluation." This section requires that the employee be evaluated in accordance with section VI of the appendix prior to performing covered functions. The evaluation process is discussed further below.

The rule also contains a provision, analogous to the one in the antidrug rule, under which employers are required to notify the Federal Air Surgeon of any instance in which a holder of a part 67 medical certificate violated the provisions of the rule or refused to submit to a required alcohol test (with the exception of pre-employment tests). The employer also has to forward to the FAA copies of the evaluations conducted by the SAP. The Federal Air Surgeon will use this information to determine whether further action should be taken with respect to the medical certificate. No employee requiring an airman medical certificate shall return to the performance of safety-sensitive functions without the Federal Air Surgeon's recommendation.

Section 614(b)(3) of the FAAct, "Performance of prior duties prohibited," provides sanctions for employees who engage in prohibited use of alcohol after the date of the Omnibus Transportation Employee Testing Act. This subsection is found only in the amendments to the FAAct and has no parallel in the amendments to the other DOT agencies' statutes. It provides that, under certain circumstances discussed below, an individual shall not be permitted to perform the duties related to air transportation that he or she performed prior to the date he or she engaged in the impermissible use of alcohol. The legislation does not require that the individual's employment be terminated, nor that he or she be reassigned to perform non-safety-sensitive functions. However, it is an absolute bar to the performance of the same duties the employee performed before the violation.

This bar applies under four circumstances. The first occurs if the individual misuses alcohol "while on duty." The remaining prohibitions all relate to rehabilitation: the absolute bar to returning to duty applies if an employee misuses alcohol after the date of enactment, and

1. Had previously misused alcohol and undergone a program of rehabilitation under the regulations promulgated pursuant to the Act;

2. Refused to undertake any required rehabilitation; or

to the proposed bar, some favoring a broad exclusion while another wanted the bar removed as inconsistent with the Americans with Disabilities Act (ADA). The latter commenter failed to note that the Act requires a permanent bar and that the regulations implementing the ADA provide for the necessity of complying with the regulations of another Federal agency (29 CFR 1630.15(e)). However, the FAA has concluded that a bar limited to the statutory requirement is more likely to be seen as clearly consistent with the ADA and other legal constraints, and has thus adopted this change in the final rule. It should be noted that employers retain any discretion they may have under independent authority to preclude such employees from performing other safety-sensitive functions. The FAA expects that employers will exercise responsible judgment in deciding whether employees not expressly barred from service will be permitted to perform other safety-sensitive functions.

As addressed in the NPRM, the bar on two-time violators will apply both to persons who had gone through rehabilitation and to those who, after evaluation by a substance abuse professional (SAP), are determined not to need treatment. Otherwise, an employee who was found to need treatment and had an instance of recidivism would be sanctioned, but an employee who did not need assistance but simply chose to engage in misuse of alcohol would not be sanctioned.

A number of commenters objected to the FAA's proposal to apply the permanent bar to individuals who engage in multiple instances of alcohol misuse. They noted that recidivism is often a normal part of the rehabilitative process. Given the Act's requirements, these comments cannot be adopted. The Act requires that individuals complete rehabilitation prior to returning to safety-sensitive functions. Therefore, once an employee has been deemed by the SAP to have completed rehabilitation and is returned to the performance of safety-sensitive functions, the employee must conform his or her conduct to the requirements of the rule.

The bar following a refusal or failure of rehabilitation is implicitly implemented in this rule by the requirement that prior to returning to duty performing safety-sensitive functions each employee must be evaluated by a SAP to determine whether the employee properly met the requirements for rehabilitation established during the initial evaluation. An employee who does not meet the requirements, whether by failure or refusal, will be precluded from returning to the performance of safety-sensitive functions. Commenters supported the FAA's choice in the NPRM not to propose a definite time period during which the employee must comply. They agreed that the rule will thus allow for the denial phase that most people go through when first confronted with evidence of an alcohol problem.

Alcohol Misuse Information and Training

In the NPRM, the FAA specifically sought comment on whether the rule should include alcohol awareness training for all employees. Commenters split almost equally between two positions: labor organizations and employees favored employee training, and employers stated that such training would be unnecessary and costly. The common preamble addresses these issues in greater detail; however, it should be noted that while the FAA is not requiring formal employee training, the FAA did adopt the recommendation to provide more detailed written materials to employees. Further, nothing in this rule precludes an employer from providing training to its employees under the employer's own authority.

Employee Referral, Evaluation, and Treatment

As was noted in the NPRM, the FAA recognized the sometimes conflicting needs of employer flexibility and employee health. The FAA did not propose to prescribe regulations with respect to specific types of rehabilitation and maintains that position in the final rule. This rule does include the process proposed in the NPRM under which each covered employee who engages in alcohol misuse or who refuses to submit to testing must be advised of all resources available to the employee. It also requires that each such employee be evaluated by a SAP to determine whether and what assistance the employee needed in resolving problems associated with alcohol misuse.

Some commenters, primarily labor organizations and employees, stated that the rule should include a mechanism to protect employees from overzealous, biased, or unprofessional SAPs. These commenters

policies.

Employer Alcohol Misuse Prevention Program Plans; Certification Statements

The FAA proposed in the NPRM to include a requirement that employers submit detailed alcohol misuse prevention program (AMPP) plans to the FAA for approval prior to implementation of a program under the rule. Many commenters stated that the use of specific plans would be unduly cumbersome in the context of an AMPP. These commenters stated that unlike drug testing, in which a single laboratory is generally used, it is likely that alcohol testing will be conducted using a variety of breath testing devices. Additionally, since the SAPs must personally evaluate each employee who violates the rule, large companies will probably arrange to have many SAPs available wherever they are necessary. These commenters requested that the FAA limit its plan submission requirements to address these concerns.

The FAA agrees with these comments. Although the use of detailed, preapproved plans was and remains beneficial in the context of the antidrug rule, the FAA has chosen to minimize the requirements for the final alcohol rule. Instead, the FAA will require submission of a certification statement that will provide specified identifying information and an agreement to comply with this rule. Like the plan submission requirement, the certification statements will provide the FAA with the ability to readily determine which companies are failing or refusing to comply with the rule.

Commenters generally supported the FAA proposal to permit companies whose employees perform covered services by contract to an employer to establish independent alcohol misuse prevention programs. Under the revised procedures in this rule, contractor companies are able to submit certification statements directly to the FAA and may be authorized to implement AMPPs for their own employees. An aspect of the NPRM that has not changed is the requirement that each entity that establishes an AMPP, whether a contractor company or an employer, must maintain its program in accordance with the final rule. A contractor company, for example, is required to maintain the confidentiality of records pertaining to its employees and must disclose such records only in accordance with the rule. The FAA has retained the ability to revoke its authorization for any contractor company that fails to properly implement its AMPP. Because employers are only able to use contractor employees who are subject to an FAA-mandated program, potential revocation of authorization to establish an AMPP provides a strong incentive to contractor companies to properly implement their programs.

The FAA has also retained the provisions under which employers and contractor companies may join consortia for purposes of complying with the rule. A consortium certification statement must set forth the aspects of the AMPP that the consortium intends to provide to aviation employers.

Generally, the final rule provides that aviation entities must submit the certification statements in duplicate. The FAA will annotate receipt on one of the copies and return it to the submitter, after which the submitter can implement its AMPP.

Phased Implementation

The NPRM included a proposed schedule for phased implementation of the AMPP for the aviation industry. Most commenters that addressed the schedule favored the FAA's proposal and this schedule has been maintained in the final rule. For each class of employers, the rule requires submission of a certification statement by a certain date and implementation of the FAA-mandated AMPP approximately 6 months later. One change was made in response to comments: As proposed, employers would have had 8 months after their specified submission date to ensure that contractor employees were subject to an approved program. Many commenters did not think, given the complexity of the new requirements, that they could both implement their own programs and monitor their contractor companies' compliance. The FAA has therefore revised the timetable to require employers to ensure compliance by contractors 12 months after the date on which the employers' must submit their certification statements.

Under the final rule, part 121 and large part 135 certificate holders (more than 50 covered employees) and air traffic control facilities are required to comply with the rule first, with implementation scheduled

and to FAA Docket Number 27066 (which addressed possible testing requirements for foreign air carriers), the FAA has determined that it will not require testing of any employees located outside the territory of the United States.

To ensure proper selection for random testing, an employer is required to remove from the random testing pool any employee assigned to perform covered functions solely outside the territory of the United States, since such an employee would not be available for testing. The employee must be returned to the random testing pool as soon as the employee once more begins to perform functions wholly or partially within the territory of the United States. Although the FAA is cognizant of concerns about safety and economic parity that would be raised by such an exclusion, the FAA has determined that extraterritorial application of this rule, with its significant logistical issues and possible conflicts with local laws, should not be pursued.

Paperwork Reduction Act Approval

Appendix J to part 121 requires each employer to submit to the FAA: An alcohol misuse prevention program certification statement; notification to the FAA of alcohol misuse by holders of airman medical certificates issued under 14 CFR part 67; notification to the FAA of refusals to submit to alcohol testing by holders of airman certificates issued under 14 CFR parts 61, 63, and 65; and annual statistical reports summarizing data on the employer's alcohol misuse prevention program. To provide the notifications and reports to the FAA, employers are required to maintain records related to each covered employee, including test results. In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the recordkeeping and reporting requirements in this final rule have been submitted to the Office of Management and Budget (OMB) for approval. Information collection requirements are not effective until the paperwork reduction act package has been received.

Economic Summary

A full regulatory evaluation has been prepared by the FAA and placed in the docket that provides detailed estimates of the economic consequences of this regulatory action. The FAA certifies that the annual costs to be imposed on small operators will not exceed the thresholds for significant impact and that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Analysis

The FAA finds that this rule affects all part 121 and part 135 air carriers. The FAA finds that this rule will not have an adverse impact on trade opportunities for either U.S. firms doing business overseas or foreign firms doing business in the United States.

Federalism Implications

This rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, the FAA has determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Significance

This rule is not likely to result in an annual effect on the economy of $100 million or more, although it may result in an increase in costs for consumers, industry, or Federal, State, or local agencies. The FAA has determined, however, that this rule involves issues of substantial interest to the public. Therefore, the FAA has determined that the rule is significant under the Executive Order 12866 and the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 2, 1979).

the crewmember was impaired by drugs or alcohol. The comments cited the case of *Johnson* v. *National Transportation Safety Board*, 979 F.2d 618 (7th Cir. 1992), in which a pilot lost his airman certificate after his copilot was determined to have been intoxicated. Revision of this provision was neither explicitly nor implicitly contemplated in the NPRM, and the FAA finds that the issue is outside the scope of this rulemaking.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR parts 61, 63, 65, 121, and 135 effective March 17, 1994.

The authority citation for part 65 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1421, 1422, and 1427 (revised, Pub. L. 102–143, October 28, 1991); 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983).

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§ 65.1 Applicability.

This part prescribes the requirements for issuing the following certificates and associated ratings and the general operating rules for the holders of those certificates and ratings:

(a) Air traffic control tower operators.

(b) Aircraft dispatchers.

(c) Mechanics.

(d) Repairmen.

(e) Parachute riggers.

§ 65.3 Certification of foreign airmen other than flight crewmembers.

A person who is neither a U.S. citizen nor a resident alien is issued a certificate under subpart D of this part, outside the United States, only when the Administrator finds that the certificate is needed for the operation or continued airworthiness of a U.S.-registered civil aircraft.

Docket 65–28 (FR 35693) Eff. 8/16/82; (Amdt. 65–28, Eff. 10/18/82)

§ 65.11 Application and issue.

(a) Application for a certificate and appropriate class rating, or for an additional rating, under this part must be made on a form and in a manner prescribed by the Administrator. Each person who is neither a U.S. citizen nor a resident alien and who applies for a written or practical test to be administered outside the United States or for any certificate or rating issued under this part must show evidence that the fee prescribed in appendix A of part 187 of this chapter has been paid.

(b) An applicant who meets the requirements of this part is entitled to an appropriate certificate and rating.

(c) Unless authorized by the Administrator, a person whose air traffic control tower operator, mechanic, or parachute rigger certificate is suspended may not apply for any rating to be added to that certificate during the period of suspension.

(d) Unless the order of revocation provides otherwise—

(1) A person whose air traffic control tower operator, aircraft dispatcher, or parachute rigger certificate is revoked may not apply for the same kind of certificate for one year after the date of revocation; and

(2) A person whose mechanic or repairman certificate is revoked may not apply for either of those kinds of certificates for one year after the date of revocation.

(Amdt. 65–9, Eff. 11/19/66; Amdt. 65–28, Eff. 10/18/82)

§ 65.12 Offenses involving alcohol or drugs.

(a) A conviction for the violation of any Federal or state statute relating to the growing, processing, manufacture, sale, disposition, possession, transportation, or importation of narcotic drugs, marijuana, or depressant or stimulant drugs or substances is grounds for—

(1) Denial of an application for any certificate or rating issued under this part for a period of up to 1 year after the date of final conviction; or

(2) Suspension or revocation of any certificate or rating issued under this part.

(b) The commission of an act prohibited by § 91.19(a) of this chapter is grounds for—

(1) Denial of an application for a certificate or rating issued under this part for a period of up to 1 year after the date of that act; or

(2) Suspension or revocation of any certificate or rating issued under this part.

Docket No. 21956 (50 FR 15379) Eff. 4/17/85); (Amdt. 65–21, Eff. 8/1/73); (Amdt. 65–29, Eff. 6/17/85); (Amdt. 65–34, Eff. 8/18/90)

§ 65.13 Temporary certificate.

A certificate and ratings effective for a period of not more than 120 days may be issued to a qualified applicant, pending review of his application and supplementary documents and the issue of the certificate and ratings for which he applied.

(Amdt. 65–23, Eff. 6/26/78)

(c) The holder of a certificate issued under this part that is suspended, revoked, or no longer effective shall return it to the Administrator.

(Amdt. 65–9, Eff. 11/19/66); (Amdt. 65–12, Eff. 12/21/67); (Amdt. 65–26, Eff. 9/9/80); Amdt. 65–28, Eff. 10/18/82)

§ 65.15a [Reserved]

§ 65.16 Change of name; replacement of lost or destroyed certificate.

(a) An application for a change of name on a certificate issued under this part must be accompanied by the applicant's current certificate and the marriage license, court order, or other document verifying the change. The documents are returned to the applicant after inspection.

(b) An application for a replacement of a lost or destroyed certificate is made by letter to the Department of Transportation, Federal Aviation Administration, Airman Certification Branch, P.O. Box 25082, Oklahoma City, Okla. 73125. The letter must—

(1) Contain the name in which the certificate was issued, the permanent mailing address (including zip code), social security number (if any), and date and place of birth of the certificate holder, and any available information regarding the grade, number, and date of issue of the certificate, and the ratings on it; and

(2) Be accompanied by a check or money order for $2.00, payable to the Federal Aviation Administration.

(c) An application for a replacement of a lost or destroyed medical certificate is made by letter to the Department of Transportation, Federal Aviation Administration, Civil Aeromedical Institute, Aeromedical Certification Branch, P.O. Box 25082, Oklahoma City, Okla. 73125, accompanied by a check or money order for $2.00.

(d) A person whose certificate issued under this part or medical certificate, or both, has been lost may obtain a telegram from the FAA confirming that it was issued. The telegram may be carried a telegraphic certificate should be sent to the office prescribed in paragraph (b) or (c) of this section, as appropriate. However, a request for both at the same time should be sent to the office prescribed in paragraph (b) of this section.

(Amdt. 65–16, Eff. 9/4/70); (Amdt. 65–17, Eff. 4/12/71)

§ 65.17 Tests: general procedure.

(a) Tests prescribed by or under this part are given at times and places, and by persons, designated by the Administrator.

(b) The minimum passing grade for each test is 70 percent.

§ 65.18 Written tests: cheating or other unauthorized conduct.

(a) Except as authorized by the Administrator, no person may—

(1) Copy, or intentionally remove, a written test under this part;

(2) Give to another, or receive from another, any part or copy of that test;

(3) Give help on that test to, or receive help on that test from, any person during the period that test is being given;

(4) Take any part of that test in behalf of another person;

(5) Use any material or aid during the period that test is being given; or

(6) Intentionally cause, assist, or participate in any act prohibited by this paragraph.

(b) No person who commits an act prohibited by paragraph (a) of this section is eligible for any airman or ground instructor certificate or rating under this chapter for a period of one year after the date of that act. In addition, the commission of that act is a basis for suspending or revoking any airman or ground instructor certificate or rating held by that person.

(Amdt. 65–3, Eff. 3/20/65)

the applicant, certifying that the airman has given the applicant additional instruction in each of the subjects failed and that the airman considers the applicant ready for retesting.

(Amdt. 65–20, Eff. 8/5/72); (Amdt. 65–23, Eff. 6/26/78)

§ 65.20 Applications, certificates, logbooks, reports, and records: falsification, reproduction, or alteration.

(a) No person may make or cause to be made—

(1) Any fraudulent or intentionally false statement on any application for a certificate or rating under this part;

(2) Any fraudulent or intentionally false entry in any logbook, record, or report that is required to be kept, made, or used, to show compliance with any requirement for any certificate or rating under this part;

(3) Any reproduction, for fraudulent purpose, of any certificate or rating under this part; or

(4) Any alteration of any certificate or rating under this part.

(b) The commission by any person of an act prohibited under paragraph (a) of this section is a basis for suspending or revoking any airman or ground instructor certificate or rating held by that person.

Oklahoma City, Okla. 73125 in writing, of his new address.

(Amdt. 65–16, Eff. 9/4/70)

§ 65.23 Refusal to submit to a drug [or alcohol] test.

[(a) *General.* This section applies to an employee who performs a function listed in appendix I or appendix J to part 121 of this chapter directly or by contract for a part 121 certificate holder, a part 135 certificate holder, an operator as defined in § 135.1(c) of this chapter, or an air traffic control facility not operated by the FAA or the U.S. military.

(b) Refusal by the holder of a certificate issued under this part to take a drug test required under the provisions of appendix I to part 121 or an alcohol test required under the provisions of appendix J to part 121 is grounds for—

(1) Denial of an application for any certificate or rating issued under this part for a period of up to 1 year after the date of such refusal; and

(2) Suspension or revocation of any certificate or rating issued under this part.]

Docket No. 25148 (53 FR 47056) Eff. 11/21/88); (Amdt. 65–32, Eff. 12/21/88); (Amdt. 65–33, Eff. 5/15/89); [(Amdt. 65–37, Eff. 3/17/94)]

qualification.

No person may act as an air traffic control tower operator at an air traffic control tower in connection with civil aircraft unless he—

(a) Holds an air traffic control tower operator certificate issued to him under this subpart;

(b) Holds a facility rating for that control tower issued to him under this subpart, or has qualified for the operating position at which he acts and is under the supervision of the holder of a facility rating for that control tower; and

For the purpose of this subpart, "operating position" means an air traffic control function performed within or directly associated with the control tower;

(c) Except for a person employed by the FAA or employed by, or on active duty with, the Department of the Air Force, Army, or Navy or the Coast Guard, holds at least a second-class medical certificate issued under part 67 of this chapter.

(Amdt. 65–13, Eff. 12/14/69); (Amdt. 65–15, Eff. 8/31/70); (Amdt. 65–25, Eff. 4/23/80); (Amdt. 65–25A, Eff. 5/7/80); (Amdt. 65–31, Eff. 6/8/87)

§ 65.33 Eligibility requirements: general.

To be eligible for an air traffic control tower operator certificate, a person must—

(a) Be at least 18 years of age;

(b) Be of good moral character;

(c) Be able to read, write, and understand the English language and speak it without accent or impediment of speech that would interfere with 2-way radio conversation;

(d) Except for a person employed by the FAA or employed by, or on active duty with, the Department of the Air Force, Army, or Navy or the Coast Guard, hold at least a second-class medical certificate issued under part 67 of this chapter since the beginning of the 12th calendar month before the date the application is made; and

(e) Comply with § 65.35.

31/70); (Amdt. 65–25, Eff. 4/23/80); (Amdt. 65–25A, Eff. 5/7/80); (Amdt. 65–31, Eff. 6/8/87)

§ 65.35 Knowledge requirements.

Each applicant for an air traffic control tower operator certificate must pass a written test on—

(a) The flight rules in part 91 of this chapter;

(b) Airport traffic control procedures, and this subpart;

(c) En route traffic control procedures;

(d) Communications operating procedures;

(e) Flight assistance service;

(f) Air navigation, and aids to air navigation; and

(g) Aviation weather.

(Amdt. 65–15, Eff. 8/31/70)

§ 65.37 Skill requirements: operating positions.

No person may act as an air traffic control tower operator at any operating position unless he has passed a practical test on—

(a) Control tower equipment and its use;

(b) Weather reporting procedures and use of reports;

(c) Notices to Airmen, and use of the Airman's Information Manual;

(d) Use of operational forms;

(e) Performance of noncontrol operational duties; and

[(f) Each of the following procedures that is applicable to the operating position and is required by the person performing the examination:]

(1) The airport, including rules, equipment, runways, taxiways, and obstructions.

[(2) The terrain features, visual checkpoints, and obstructions within the lateral boundaries of the surface areas of Class B, Class C, Class D, or Class E airspace designated for the airport.]

(3) Traffic patterns and associated procedures for use of preferential runways and noise abatement.

(9) Radar alignment and technical operation.

(10) The application of the prescribed radar and nonradar separation standard, as appropriate.

(Amdt. 65–8, Eff. 2/26/66); (Amdt. 65–15, Eff. 8/31/70); [(Amdt. 65–36, Eff. 9/16/93)]

§ 65.39 Practical experience requirements; facility rating.

Each applicant for a facility rating at any air traffic control tower must have satisfactorily served—

(a) As an air traffic control tower operator at that control tower without a facility rating for at least 6 months; or

(b) As an air traffic control tower operator with a facility rating at a different control tower for at least 6 months before the date he applies for the rating.

However, an applicant who is a member of an Armed Force of the United States meets the requirements of this section if he has satisfactorily served as an air traffic control tower operator for at least 6 months.

(Amdt. 65–7, Eff. 6/23/66); (Amdt. 65–15, Eff. 8/31/70); (Amdt. 65–19, 12/6/71)

§ 65.41 Skill requirements: facility ratings.

Each applicant for a facility rating at an air traffic control tower must have passed a practical test on each item listed in § 65.37 of this part that is applicable to each operating position at the control tower at which the rating is sought.

(Amdt. 65–7, Eff. 6/23/66); (Amdt. 65–15, Eff. 8/31/70)

§ 65.43 Rating privileges and exchange.

(a) The holder of a senior rating on August 31, 1970, may at any time after that date exchange his rating for a facility rating at the same air traffic control tower. However, if he does not do so before August 31, 1971, he may not thereafter exercise the privileges of his senior rating at the control tower concerned until he makes the exchange.

(Amdt. 65–15, Eff. 8/31/70)

§ 65.45 Performance of duties.

(a) An air traffic control tower operator shall perform his duties in accordance with the limitations on his certificate and the procedures and practices prescribed in air traffic control manuals of the FAA, to provide for the safe, orderly, and expeditious flow of air traffic.

(b) An operator with a facility rating may control traffic at any operating position at the control tower at which he holds a facility rating. However, he may not issue an air traffic clearance for IFR flight without authorization from the appropriate facility exercising IFR control at that location.

(c) An operator who does not hold a facility rating for a particular control tower may act at each operating position for which he has qualified, under the supervision of an operator holding a facility rating for that control tower.

(Amdt. 65–9, Eff. 11/19/66); (Amdt. 65–15, Eff. 8/31/70); (Amdt. 65–16, Eff. 9/4/70)

§ 65.46 Use of prohibited drugs.

(a) The following definitions apply for the purposes of this section:

(1) An ''employee'' is a person who performs an air traffic control function for an employer. For the purpose of this section, a person who performs such a function pursuant to a contract with an employer is considered to be performing that function for the employer.

(2) An ''employer'' means an air traffic control facility not operated by, or under contract with, the FAA or the U.S. military that employs a person to perform an air traffic control function.

(b) Each employer shall provide each employee performing a function listed in appendix I to part 121 of this chapter and his or her supervisor with the training specified in that appendix. No employer may use any contractor to perform an air traffic control function unless that contractor provides each of its employees performing that function for the

section, no employer may knowingly use any person to perform, nor may any person perform for an employer, either directly or by contract, any air traffic control function if that person failed a test or refused to submit to a test required by appendix I to part 121 of this chapter given by a certificate holder, by an employer, or by an operator as defined in § 135.1(c) of this chapter.

(e) Paragraph (d) of this section does not apply to a person who has received a recommendation to be hired or to return to duty from a medical review officer in accordance with appendix I to part 121 of this chapter or who has received a special issuance medical certificate after evaluation by the Federal Air Surgeon for drug dependency in accordance with part 67 of this chapter.

(f) Each employer shall test each of its employees who performs any air traffic control function in accordance with appendix I to part 121 of this chapter. No employer may use any contractor to perform any air traffic control function unless that contractor tests each employee performing such a function for the employer in accordance with that appendix.

Docket No. 25148 (53 FR 47056) Eff. 11/21/88); (Amdt. 65–32, Eff. 12/21/88)

[§ 65.46a Misuse of alcohol.

[(a) This section applies to employees who perform air traffic control duties directly or by contract for an employer that is an air traffic control facility not operated by the FAA or the U.S. military (*covered employees*).

(b) *Alcohol concentration.* No covered employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. No employer having actual knowledge that an employee has an alcohol concentration of 0.04 or greater shall permit the employee to perform or continue to perform safety-sensitive functions.

(c) *On-duty use.* No covered employee shall use alcohol while performing safety-sensitive functions. No employer having actual knowledge that a covered employee is using alcohol while performing

(e) *Use following an accident.* No covered employee who has actual knowledge of an accident involving an aircraft for which he or she performed a safety-sensitive function at or near the time of the accident shall use alcohol for 8 hours following the accident, unless he or she has been given a post-accident test under appendix J to part 121 of this chapter, or the employer has determined that the employee's performance could not have contributed to the accident.

(f) *Refusal to submit to a required alcohol test.* No covered employee shall refuse to submit to a post-accident, random, reasonable suspicion, or follow-up alcohol test required under appendix J to part 121 of this chapter. No employer shall permit an employee who refuses to submit to such a test to perform or continue to perform safety-sensitive functions.]

[(Amdt. 65–37, Eff. 3/17/94)]

[§ 65.46b Testing for alcohol.

[(a) Each air traffic control facility not operated by the FAA or the U.S. military (hereinafter *employer*) must establish an alcohol misuse prevention program in accordance with the provisions of appendix J to part 121 of this chapter.

(b) No employer shall use any person who meets the definition of *covered employee* in appendix J to part 121 to perform a safety-sensitive function listed in that appendix unless such person is subject to testing for alcohol misuse in accordance with the provisions of appendix J.]

[(Amdt. 65–37, Eff. 3/17/94)]

§ 65.47 Maximum hours.

Except in an emergency, a certificated air traffic control tower operator must be relieved of all duties for at least 24 consecutive hours at least once during each 7 consecutive days. Such an operator may not serve or be required to serve—

(a) For more than 10 consecutive hours; or

(b) For more than 10 hours during a period of 24 consecutive hours, unless he has had a rest

control tower operator under a certificate issued to him or her under this part unless he or she has in his or her personal possession an appropriate current medical certificate issued under part 67 of this chapter.

(b) Each person holding an air traffic control tower operator certificate shall keep it readily available when performing duties in an air traffic control tower, and shall present that certificate or his medical certificate or both for inspection upon the request of the Administrator or an authorized representative of the National Transportation Safety Board, or of any Federal, State, or local law enforcement officer.

(c) A certificated air traffic control tower operator who does not hold a facility rating for a particular control tower may not act at any operating position at the control tower concerned unless there is maintained at that control tower, readily available to persons named in paragraph (b), a current record of the operating positions at which he has qualified.

(d) An air traffic control tower operator may not perform duties under his certificate during any

(f) The holder of an air traffic control tower operator certificate, or an applicant for one, shall, upon the reasonable request of the Administrator, cooperate fully in any test that is made of him.

(Amdt. 65–15, Eff. 8/31/70); (Amdt. 65–31, Eff. 6/8/87)

§ 65.50 Currency requirements.

The holder of an air traffic control tower operator certificate may not perform any duties under that certificate unless—

(a) He has served for at least 3 of the preceding 6 months as an air traffic control tower operator at the control tower to which his facility rating applies, or at the operating positions for which he has qualified; or

(b) He has shown that he meets the requirements for his certificate and facility rating at the control tower concerned, or for operating at positions for which he has previously qualified.

(Amdt. 65–15, Eff. 8/31/70)